

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SEAN RODNEY ORTH,

Plaintiff,

vs.

SHERIFF, WASHOE COUNTY, et al.,

Defendants.

Case No. 3:06-CV-00271-LRH-(VPC)

**ORDER**

Petitioner has submitted an Application to Proceed in Forma Pauperis on appeal (#12). The Court finds that Petitioner is unable to pay the appellate filing fee.

Petitioner has also submitted a Motion to Reconsider (#13). Petitioner complains about several pre-trial irregularities. The Court dismissed the Petition (#7) because none of them were extraordinary enough to warrant intervention in a pending criminal case in state court. State courts can address these problems in the state appellate process if necessary. Petitioner's disagreement with the Court's ruling is more appropriate for appellate review than a motion for reconsideration. See McCarthy v. Mayo, 827 F.2d 1310, 1318 (9th Cir. 1987). See also Plotkin v. Pacific Tel. and Tel. Co., 688 F.2d 1291, 1293 (9th Cir. 1982).

Petitioner did not submit a motion for a certificate of appealability. To appeal the denial of a petition for a writ of habeas corpus, Petitioner might need to obtain a certificate of appealability, after making a "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c).

1                   Where a district court has rejected the constitutional claims on  
2                   the merits, the showing required to satisfy §2253(c) is straightforward:  
3                   The petitioner must demonstrate that reasonable jurists would find the  
                    district court's assessment of the constitutional claims debatable or  
                    wrong.

4                   Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th  
5                   Cir. 2000). Petitioner is currently a pre-trial detainee in state custody. It is an open question  
6                   whether a certificate of appealability is necessary under these circumstances. McNeely v. Blanas,  
7                   336 F.3d 822, 832 n.10 (9th Cir. 2003). To the extent that one is necessary, reasonable jurists might  
8                   find the Court's determination that intervention is not necessary to be debatable or wrong. The  
9                   Court will grant a certificate of appealability.

10                   IT IS THEREFORE ORDERED that Petitioner's Application to Proceed in Forma  
11                   Pauperis on appeal (#12) is **GRANTED**. Petitioner shall not be required to make any prepayment  
12                   of the filing fee for his appeal.

13                   IT IS FURTHER ORDERED that Petitioner's Motion to Reconsider (#13) is  
14                   **DENIED**.

15                   IT IS FURTHER ORDERED that a certificate of appealability is **GRANTED** on  
16                   whether intervention in Petitioner's pending criminal matter in state court is warranted.

17                   DATED this 15<sup>th</sup> day of December, 2006.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE